

MVP: Winston & Strawn's Jeffrey Kessler

By Max Jaeger

Law360 (September 17, 2021, 4:33 PM EDT) -- Jeffrey Kessler, co-chairman of Winston & Strawn LLP's sports law practice, changed the sports industry when he netted a unanimous U.S. Supreme Court victory stripping the NCAA of its long-running amateurism defense and giving college athletes more flexibility to seek compensation, earning him a spot as one of Law360's 2021 Sports and Betting MVPs.

HIS BIGGEST WIN THIS YEAR:

There's no contest: Kessler's biggest win of the year was convincing the Supreme Court to rule 9-0 that the NCAA could not restrict athletes' education-related benefits.

"We don't often get an opportunity to win in the Supreme Court, and it's even rarer to win 9-0. We all spent so much time preparing for that," Kessler said, adding that the win gave him an immense sense of pride not just for his team at Winston & Strawn, but also for co-counsel from Hagens Berman Sobol Shapiro LLP and Pearson Simon & Warshaw LLP.

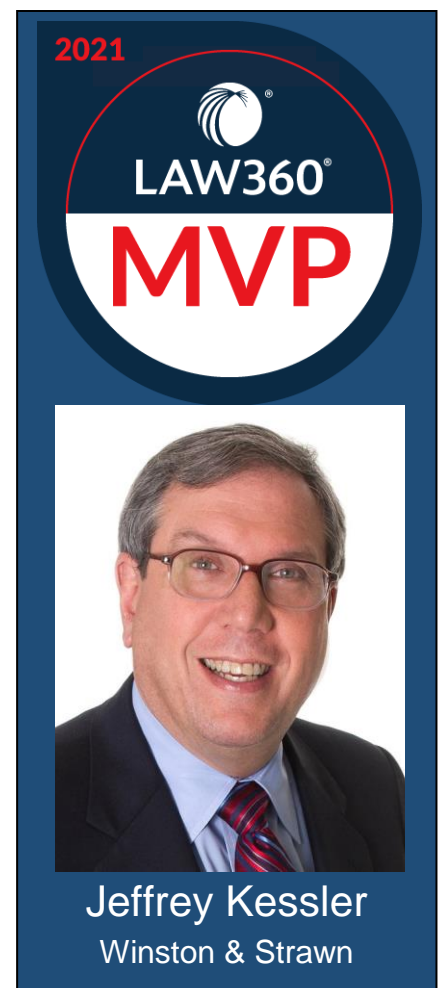
The decision, which unraveled the NCAA's long-standing argument that its tradition of amateurism should insulate it from antitrust claims, has had knock-on effects for athletes. Just weeks after the decision came down, the NCAA temporarily rescinded rules against athletes capitalizing on their name, image or likeness after years of dragging its feet on updating its permanent policy.

That "unleashed the full forces of competition for names, images and likeness," Kessler said. "And that has had profound economic effects immediately for these athletes."

HIS BIGGEST CHALLENGE THIS YEAR:

Procedural hurdles and the coronavirus pandemic snarled Kessler's efforts to win equal pay and working conditions for the U.S. women's national soccer team, he said, but things are finally back in motion.

Last year, U.S. District Judge R. Gary Klausner tossed the players' class claims that they had been systematically underpaid, and Kessler had to resolve their working conditions claims before appealing the pay ruling.



But Judge Klausner signed off on a settlement in April guaranteeing the women charter flights, hotel rooms and staff sizes and venues equitable to their male counterparts, and now he's trying to revive the pay claims.

"We're very optimistic the decision dismissing those claims is going to be overturned, and we hope to get back to trial next year," Kessler said.

WHAT MOTIVATES HIM:

Kessler said he wants to level the playing field for athletes. Growing up, he idolized pros like boxer Muhammad Ali, NBA phenom Kareem Abdul-Jabbar and Olympic track and field athlete John Carlos not just for their physical prowess, but also for their focus on social justice and political issues.

Now, many of Kessler's cases seek to rectify the imbalance of power between franchise owners and their players, he said.

"It's a very player-oriented practice," he said. "I really identify with [athletes'] issues, and their personal struggles and how historically they've been mistreated."

HIS ADVICE FOR ROOKIE ATTORNEYS:

It's all about fundamentals, and though a passion for sports may help, a sound legal playbook is the key, Kessler says.

"The mistake that lawyers interested in sports practice make sometimes is they think they have to be an expert in sports. That's wrong," he said. "What they really have to focus on is becoming great lawyers and then figuring out how to get the opportunity to use those skills in sports."

Kessler has lived it — his own antitrust acumen became his ticket into the sports law world starting with research he did as a first-year at Weil Gotshal & Manges LLP for the landmark 1976 settlement in *Robertson v. National Basketball Ass'n*, which established NBA free agency.

Working at the intersection of competition and sports, he grew to represent the likes of Tom Brady, Lattrell Sprewell, Ray Rice and the U.S. women's soccer team. Now he's applying that same ethos to sports and leagues no one could have dreamed of when he started — Overwatch and Call of Duty players in esports leagues.

"A lot of the legal issues that have come up over the years in sports apply to those leagues, and so it's actually a very easy adaptation. But of course, I'm learning all about the esports themselves," he laughed.

— *As told to Max Jaeger*

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